

House Bill 615

By: Representatives Bearden of the 68th, Horne of the 71st, Austin of the 10th, Powell of the 29th, Jerguson of the 22nd, and others

A BILL TO BE ENTITLED
AN ACT

To amend Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to carrying and possession of firearms, so as to revise comprehensively the laws concerning the carrying of concealed weapons; to revise the method by which licenses to carry weapons are issued; to prohibit the carrying of certain items in certain buildings; to provide exceptions; to provide a penalty; to prohibit the seizure or registration of firearms during official states of emergency; to prohibit any additional limitations on carrying firearms during states of emergency; to provide civil remedies for violations; to provide for related matters; to amend Part 1 of Article 3 of Chapter 3 of Title 38 of the Official Code of Georgia Annotated, relating to emergency powers of the Governor, so as to revise the powers of the Governor to suspend or limit the sale, dispensing, or transportation of firearms during states of emergency; to provide for related matters; to amend Article 4 of Chapter 18 of Title 50 of the Official Code of Georgia Annotated, relating to inspection of public records, so as to provide that records concerning licenses to carry weapons maintained by the Secretary of State are not subject to disclosure; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 3 of Article 4 of Chapter 11 of Title 16 of the Official Code of Georgia Annotated, relating to carrying and possession of firearms, is amended by revising subsections (c) and (d) of Code Section 16-11-126, relating to carrying a concealed weapon, as follows:

"(c) This Code section shall not permit, outside of his or her home, motor vehicle, or place of business, the concealed carrying of a ~~pistol, revolver, or concealable firearm~~ weapon by any person unless that person has on his or her person a valid license issued under Code Section 16-11-129 ~~and the pistol, revolver, or firearm may only be carried in a shoulder holster, waist belt holster, any other holster, hipgrip, or any other similar device,~~ in which

event the weapon may be concealed by the person's clothing, or a handbag, purse, attache case, briefcase, or other closed container. Any person having been issued a license to carry a concealed weapon pursuant to Code Section 16-11-129 shall be permitted to carry such weapon, subject to the limitations of this part, in all parks, historic sites, or recreational areas as defined by Code Section 12-3-10 and in all wildlife management areas.

(d) This Code section shall not forbid the transportation of any firearm by a person who is not among those enumerated as ineligible for a license under paragraph (1) of subsection (b) of Code Section 16-11-129, provided the firearm is enclosed in a case, unloaded, and separated from its ammunition."

SECTION 2.

Said part is further amended by revising Code Section 16-11-127, relating to carrying deadly weapons to or at public gatherings, as follows:

"16-11-127.

(a) ~~Except as provided in Code Section 16-11-127.1, a person shall be guilty of a misdemeanor when he or she carries to or while at a public gathering any explosive compound, firearm, or knife designed for the purpose of offense and defense.~~ A person shall be guilty of a misdemeanor when he or she carries an explosive compound, firearm, or knife designed for the purpose of offense or defense while in a portion of a building that houses a courtroom or a jail or prison.

(b) ~~For the purpose of this Code section, 'public gathering' shall include, but shall not be limited to, athletic or sporting events, churches or church functions, political rallies or functions, publicly owned or operated buildings, or establishments at which alcoholic beverages are sold for consumption on the premises and which derive less than 50 percent of their total annual gross food and beverage sales from the sale of prepared meals or food. Nothing in this Code section shall otherwise prohibit the carrying of a firearm in any other public place by a person licensed or permitted to carry such firearm by this part.~~ A person possessing a license issued pursuant to Code Section 16-11-129 shall be permitted to carry a firearm in every location in the state not listed in subsection (a) of this Code section, notwithstanding any other Code section, provided that nothing in this subsection shall limit any pre-existing right to exclude others from private property. For the purposes of this subsection, 'a license issued pursuant to Code Section 16-11-129' shall include an unexpired license issued by a probate judge under a former version of Code Section 16-11-129.

~~(c)(1) This Code section shall not apply to competitors participating in organized sport shooting events.~~

~~(2) Law enforcement officers, peace officers retired from state, local, or federal law enforcement agencies, judges, magistrates, constables, solicitors-general, and district attorneys may carry pistols in publicly owned or operated buildings; provided, however, that a courthouse security plan adopted in accordance with paragraph (10) of subsection (a) of Code Section 15-16-10 may prohibit the carrying of a pistol. This Code section shall not apply to the use of weapons as exhibits in a legal proceeding, provided that such weapons are secured and handled as directed by the personnel providing courtroom security or the presiding judge.~~

~~(d) It shall be an affirmative defense to a violation of this Code section if a person notifies a law enforcement officer or other person employed to provide security for a public gathering of the presence of such item as soon as possible after learning of its presence and surrenders or secures such item as directed by such law enforcement officer or other person employed to provide security for such public gathering. This Code section shall not apply to a person who approaches security or management personnel upon arrival at a place described in subsection (a) of this Code section, notifies such security or management personnel of the presence of the weapon, and follows the security or management personnel's direction for securing, storing, or temporarily surrendering such weapon on site. A person shall not be denied entry into such places for want of storage facilities for the lawfully declared weapons.~~

~~(e) A person licensed or permitted to carry a firearm by this part shall be permitted to carry such firearm, subject to the limitations of this part, in all parks, historic sites, and recreational areas, including all publicly owned buildings located in such parks, historic sites, and recreational areas and in wildlife management areas, notwithstanding Code Section 12-3-10, in wildlife management areas notwithstanding Code Section 27-3-1.1 and 27-3-6, and in public transportation notwithstanding Code Sections 16-12-122 through 16-12-127; provided, however, that a person shall not carry a firearm into a place prohibited by federal law.~~

~~(f) A person licensed or permitted to carry a firearm by this part shall not consume alcoholic beverages in a restaurant or other eating establishment while carrying a firearm. Any person violating this subsection shall be guilty of a misdemeanor."~~

SECTION 3.

Said part is further amended by revising Code Section 16-11-128, relating to carrying pistol without license, as follows:

"16-11-128.

~~(a) A person commits the offense of carrying a pistol without a license when he has or carries on or about his person, outside of his home, motor vehicle, or place of business, any~~

~~pistol or revolver without having on his person a valid license issued by the judge of the probate court of the county in which he resides, provided that no permit shall be required for persons with a valid hunting or fishing license on their person or for persons not required by law to have hunting licenses who are engaged in legal hunting, fishing, or sport shooting when the persons have the permission of the owner of the land on which the activities are being conducted; provided, further, that the pistol or revolver, whenever loaded, shall be carried only in an open and fully exposed manner.~~

~~(b) Upon conviction of the offense of carrying a pistol without a license, a person shall be punished as follows:~~

~~(1) For the first offense, he shall be guilty of a misdemeanor; and~~

~~(2) For the second offense, and for any subsequent offense, he is guilty of a felony, and, upon conviction thereof, shall be imprisoned for not less than one year nor more than five years.~~

~~(c) On and after October 1, 1996, a person licensed to carry a handgun in any state whose laws recognize and give effect within such state to a license issued pursuant to this part shall be authorized to carry a handgun in this state, but only while the licensee is not a resident of this state; provided, however, that such license holder shall carry the handgun in compliance with the laws of this state Reserved."~~

SECTION 4.

Said part is further amended by revising Code Section 16-11-129, relating to license to carry pistol or revolver, as follows:

"16-11-129.

(a) *Application for license or renewal license; term.* ~~The judge of the probate court of each county~~ Secretary of State may, on application under oath and on payment of a the required fee of \$15.00, issue a license or renewal license valid for a period of five years to any person whose domicile is in that county or who is on active duty with the United States armed forces and who is not a domiciliary of this state but who either resides in that county or on a military reservation located in whole or in part in that county at the time of such application, which license or renewal license shall authorize that person to carry ~~any pistol or revolver~~ a concealed weapon in any county of this state notwithstanding any change in that person's county of residence or state of domicile. The fee for such license shall be \$15.00 for a renewable permit valid for a period of five years or \$40.00 for a permanent license valid for the remainder of the applicant's life. Applicants shall submit the application for a license or renewal license to the ~~judge of the probate court~~ Secretary of State on forms prescribed and furnished free of charge online to persons wishing to apply for the license or renewal license. An applicant who is not a United States citizen shall

provide sufficient personal identifying data, including without limitation his or her place of birth and United States issued alien or admission number, as the Georgia Bureau of Investigation may prescribe by rule or regulation. An applicant who is in nonimmigrant status shall provide proof of his or her qualifications for an exception to the federal firearm prohibition pursuant to 18 U.S.C. Section 922(y). Forms shall be designed to elicit information from the applicant pertinent to his or her eligibility under this Code section, including citizenship, but shall not require data which is nonpertinent or irrelevant such as serial numbers or other identification capable of being used as a de facto registration of firearms owned by the applicant. ~~The Department of Public Safety shall furnish application forms and license forms required by this Code section. The forms shall be furnished to each judge of each probate court within the state at no cost.~~

(b) *Licensing exceptions.* No license or renewal license shall be granted to:

(1) Any person who is prohibited from possessing firearms pursuant to 18 U.S.C. Section 922(g);

(1.1) Any person under 21 years of age;

(2) Any person who is a fugitive from justice or against whom proceedings are pending for any felony; or forcible misdemeanor, ~~or violation of Code Section 16-11-126, 16-11-127, or 16-11-128~~ until such time as the proceedings are adjudicated;

(3) Any person who has been convicted of a felony by a court of this state or any other state; by a court of the United States including its territories, possessions, and dominions; or by a court of any foreign nation and has not been pardoned for such felony by the President of the United States, the State Board of Pardons and Paroles, or the person or agency empowered to grant pardons under the constitution or laws of such state or nation or any person who has been convicted of a forcible misdemeanor and has not been free of all restraint or supervision in connection therewith for at least five years ~~or any person who has been convicted of a violation of Code Section 16-11-126, 16-11-127, or 16-11-128 and has not been free of all restraint or supervision in connection therewith for at least three years~~, immediately preceding the date of the application;

(4) Any individual who has been involuntarily hospitalized as an inpatient in any mental hospital or alcohol or drug treatment center within five years of the date of his or her application. The ~~probate judge~~ Secretary of State may require any applicant to sign a waiver authorizing any mental hospital or treatment center to inform the ~~judge~~ Secretary of State whether or not the applicant has been an inpatient in any such facility in the last five years and authorizing the superintendent of such facility to make to the ~~judge~~ Secretary of State a recommendation regarding whether a license to carry a pistol or revolver should be issued. When such a waiver is required by the ~~probate judge~~ Secretary of State, the applicant shall pay to the ~~probate judge~~ Secretary of State a fee of \$3.00 for

reimbursement of the cost of making such a report by the mental health hospital, alcohol or drug treatment center, or the Department of Human Resources, which the ~~probate judge~~ Secretary of State shall remit to the hospital, center, or department. The ~~judge~~ Secretary of State shall keep any such hospitalization or treatment information confidential. It shall be at the discretion of the ~~probate judge~~ Secretary of State, considering the circumstances surrounding the hospitalization and the recommendation of the superintendent of the hospital or treatment center where the individual was a patient, to issue the license or renewal license; or

~~(5)(A) Any person, the provisions of paragraph (3) of this subsection notwithstanding, who has been convicted of an offense arising out of the unlawful manufacture, distribution, possession, or use of a controlled substance or other dangerous drug.~~

~~(B) As used in this paragraph, the term:~~

~~(i) 'Controlled substance' means any drug, substance, or immediate precursor included in the definition of controlled substances in paragraph (4) of Code Section 16-13-21.~~

~~(ii) 'Convicted' means a plea of guilty, a finding of guilt by a court of competent jurisdiction, the acceptance of a plea of nolo contendere, or the affording of first offender treatment by a court of competent jurisdiction irrespective of the pendency or availability of an appeal or an application for collateral relief.~~

~~(iii) 'Dangerous drug' means any drug defined as such in Code Section 16-13-71; or~~

~~(6)(5) Any person not lawfully present in the United States.~~

(c) *Fingerprinting.*

Following completion of the initial application for a license ~~or the renewal of a license~~, the ~~judge of the probate court~~ Secretary of State shall require the applicant to proceed to an appropriate law enforcement agency ~~in the county with the completed application or the Georgia Applicant Processing Service.~~ The appropriate local law enforcement agency ~~in each county or the Georgia Applicant Processing Service~~ shall then capture the fingerprints of the applicant for a license ~~or renewal license~~ to carry a pistol ~~or revolver~~, ~~place the fingerprint required by subsection (f) of this Code section on a blank license form which has been furnished to the law enforcement agency by the judge of the probate court, and place the name of the applicant on the blank license form.~~ The law enforcement agency shall concealed weapon and be entitled to a fee of \$5.00 from the applicant for its services in connection with the application.

(d) *Investigation of applicant; issuance of license; renewal.*

(1) ~~For both license applications and requests for license renewals, the judge of the probate court shall within two business days following the receipt of the application or request direct the law enforcement agency to~~ The appropriate law enforcement agency

or Georgia Applicant Processing Service shall request a fingerprint based criminal history records check from the Georgia Crime Information Center and Federal Bureau of Investigation for purposes of determining the suitability of the applicant and return an appropriate report to the ~~judge of the probate court~~ Secretary of State. Fingerprints shall be in such form and of such quality as prescribed by the Georgia Crime Information Center and under standards adopted by the Federal Bureau of Investigation. The Georgia Bureau of Investigation may charge ~~such a fee as is necessary~~ of \$20.00 to cover the cost of the records search.

(2) For both license applications and requests for license renewals, the ~~judge of the probate court~~ Secretary of State shall within two business days following the receipt of the application or request also ~~direct the law enforcement agency to~~ conduct a background check using the Federal Bureau of Investigation's National Instant Criminal Background Check System ~~and return an appropriate report to the probate judge.~~

(3) When a person who is not a United States citizen applies for a license or renewal of a license under this Code section, the ~~judge of the probate court~~ Secretary of State shall ~~direct the law enforcement agency to~~ conduct a search of the records maintained by the United States ~~Bureau of~~ Immigration and Customs Enforcement. As a condition to the issuance of a license or the renewal of a license, an applicant who is in nonimmigrant status shall provide proof of his or her qualifications for an exception to the federal firearm prohibition pursuant to 18 U.S.C. Section 922(y).

(4) ~~The law enforcement agency shall report to the judge of the probate court within 30 days, by telephone and in writing, of any findings relating to the applicant which may bear on his or her eligibility for a license or renewal license under the terms of this Code section. When no derogatory information is found on the applicant bearing on his or her eligibility to obtain a license or renewal license, a report shall not be required. The law enforcement agency shall return the application and the blank license form with the fingerprint thereon directly to the judge of the probate court within such time period. Not later than ten days after the judge of the probate court~~ Secretary of State receives the ~~report from the law enforcement agency~~ reports provided for in subsections (b) and (c) of this Code section, as appropriate, concerning the suitability of the applicant for a ~~firearms license to carry a concealed weapon,~~ the ~~judge of the probate court~~ Secretary of State shall issue such applicant a license or renewal license to carry ~~any pistol or revolver~~ a concealed weapon unless facts establishing ineligibility have been reported or unless the ~~judge~~ Secretary of State determines such applicant has not met all the qualifications; ~~is not of good moral character,~~ or has failed to comply with any of the requirements contained in this Code section. The ~~judge of the probate court~~ Secretary of State shall

date stamp the report ~~from the law enforcement agency~~ to show the date on which the report was received ~~by the judge of the probate court~~.

(e) *Revocation, loss, or damage to license.* If, at any time during the period for which the license was issued, the ~~judge of the probate court of the county in which the license was issued~~ Secretary of State shall learn or have brought to his or her attention in any manner any reasonable ground to believe the licensee is not eligible to retain the license, the ~~judge~~ Secretary of State may, after notice and hearing, revoke the license of the person upon adjudication of falsification of application, mental incompetency, chronic alcohol or narcotic usage, or conviction of any felony or forcible misdemeanor, ~~or for violation of Code Section 16-11-126, 16-11-127, or 16-11-128.~~ It shall be unlawful for any person to possess a license which has been revoked, and any person found in possession of any such revoked license, except in the performance of his or her official duties, shall be guilty of a misdemeanor. It shall be required that any license holder under this Code section have in his or her possession his or her valid license whenever he or she is carrying a ~~pistol or revolver~~ concealed weapon under the authority granted by this Code section, and his or her failure to do so shall be prima-facie evidence of a violation of Code Section ~~16-11-128~~ 16-11-126. Loss of any license issued in accordance with this Code section or damage to the license in any manner which shall render it illegible shall be reported to the ~~judge of the probate court of the county in which it was issued~~ Secretary of State within 48 hours of the time the loss or damage becomes known to the license holder. The ~~judge of the probate court~~ Secretary of State shall thereupon issue a replacement for and shall take custody of and destroy a damaged license; and in any case in which a license has been lost, he or she shall issue a cancellation order and notify by telephone and in writing each of the law enforcement agencies whose records were checked before issuance of the original license. The ~~judge~~ Secretary of State shall charge ~~the fee specified in subsection (k) of Code Section 15-9-60~~ a fee of \$5.00 for such services.

(f) *License specifications.* Licenses issued as prescribed in this Code section shall ~~be printed on durable but lightweight card stock, and the completed card shall be laminated in plastic to improve its wearing qualities and to inhibit alterations. Measurements shall be 3 1/4 inches long, and 2 1/4 inches wide. Each shall be serially numbered within the county of issuance and shall bear the full name, residential address, birth date, weight, height, color of eyes, and sex, and a clear print of the right index finger of the licensee. If the right index fingerprint cannot be secured for any reason, the print of another finger may be used but such print shall be marked to identify the finger from which the print is taken.~~ The license shall show the date of issuance, the expiration date or lifetime, as the case may be, ~~and the probate court in which issued and shall be signed by the licensee and bear the signature or facsimile thereof of the judge~~ Secretary of State. ~~The seal of the court shall~~

281 ~~be placed on the face before the license is laminated. The reverse side of the license shall~~
282 ~~have imprinted thereon in its entirety Code Section 16-11-127.~~

283 (g) *Alteration or counterfeiting of license; penalty.* A person who deliberately alters or
284 counterfeits such a license card commits a felony and, upon conviction thereof, shall be
285 punished by imprisonment for a period of not less than one nor more than five years.

286 (h) *Licenses for former law enforcement officers.* Except as otherwise provided in Code
287 Section 16-11-130, any person who has served as a law enforcement officer for at least ten
288 of the 12 years immediately preceding the retirement of such person as a law enforcement
289 officer shall be entitled to be issued a license as provided for in this Code section without
290 the payment of any of the fees provided for in this Code section. Such person must comply
291 with all the other provisions of this Code section relative to the issuance of such licenses.
292 As used in this subsection, the term 'law enforcement officer' means any peace officer who
293 is employed by the United States government or by the State of Georgia or any political
294 subdivision thereof and who is required by the terms of his or her employment, whether by
295 election or appointment, to give his or her full time to the preservation of public order or
296 the protection of life and property or the prevention of crime. Such term shall include
297 conservation rangers.

298 (i) *Temporary renewal licenses.*

299 (1) Any person who holds a license under this Code section ~~to carry a pistol or revolver~~
300 may, at the time he or she applies for a renewal of the license, also apply for a temporary
301 renewal license if less than 90 days remain before expiration of the license he or she then
302 holds or if his or her previous license has expired within the last 30 days.

303 (2) Unless the ~~judge of the probate court~~ Secretary of State knows or is made aware of
304 any fact which would make the applicant ineligible for a five-year renewal license, the
305 ~~judge~~ Secretary of State shall at the time of application issue a temporary renewal license
306 to the applicant.

307 (3) Such a temporary renewal license shall be in the form of a paper receipt indicating
308 the date on which the ~~court~~ Secretary of State received the renewal application and shall
309 show the name, address, sex, age, and race of the applicant and that the temporary
310 renewal license expires 90 days from the date of issue.

311 (4) During its period of validity the temporary renewal permit, if carried on or about the
312 holder's person together with the holder's previous license, shall be valid in the same
313 manner and for the same purposes as a five-year license.

314 (5) A \$1.00 fee shall be charged ~~by the probate court~~ for issuance of a temporary renewal
315 license.

316 (6) A temporary renewal license may be revoked in the same manner as a five-year
317 license.

(j) When an eligible applicant who is a United States citizen fails to receive a license, temporary permit, or renewal license within the time period required by this Code section and the application or request has been properly filed, the applicant may bring an action in mandamus or other legal proceeding in order to obtain a license, temporary license, or renewal license, and such applicant shall be entitled to recover his or her costs in such action, including reasonable attorney's fees."

SECTION 5.

Said part is further amended by adding a new Code section to read as follows:

"16-11-136.

(a) No officer or employee of the state or any political subdivision thereof, member of the National Guard in the service of the state, or any person operating pursuant to or under color of state law, receiving state funds, under control of any official of the state or political subdivision thereof, or providing services to such officer, employee, or other person, while acting during a declared official state of emergency, shall:

(1) Temporarily or permanently seize, or authorize seizure of, any firearm the possession of which is not prohibited under Article 4 of Chapter 11 of this title, other than as evidence in a criminal investigation;

(2) Require registration of any firearm for which registration is not required by Article 4 of Chapter 11 of this title;

(3) Prohibit possession of any firearm, or promulgate any rule, regulation, or order prohibiting possession of any firearm, in any place or by any person where such possession is not otherwise prohibited by Article 4 of Chapter 11 of this title; or

(4) Prohibit the carrying of firearms by any person otherwise authorized to carry firearms under Article 4 of Chapter 11 of this title, solely because such person is operating under the direction, control, or supervision of an agency of the state or political subdivision thereof during a declared official state of emergency.

(b) Any individual aggrieved by a violation of this Code section may seek in the courts of this state relief in an action at law or in equity or other proper proceeding for redress against any person who subjects such individual, or causes such individual to be subjected, to the deprivation of any of the rights, privileges, or immunities provided by this Code section.

(c) In addition to any other remedy at law or in equity, an individual aggrieved by the seizure or confiscation of a firearm in violation of this Code section may bring an action for return of such firearm in the superior court of the county in which that individual resides or in which such firearm is located. In any action or proceeding to enforce this

353 Code section, the court shall award the prevailing party, other than the state or political
354 subdivision thereof, reasonable attorney fees."

355 **SECTION 6.**

356 Part 1 of Article 3 of Chapter 3 of Title 38 of the Official Code of Georgia Annotated,
357 relating to emergency powers of the Governor, is amended by revising paragraph (8) of
358 subsection (d) of Code Section 38-3-51, relating to emergency powers of Governor, as
359 follows:

360 "(8) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages,
361 ~~firearms, explosives, and combustibles; provided, however, that any limitation on~~
362 ~~firearms under this Code section shall not include an individual firearm owned by a~~
363 ~~private citizen which was legal and owned by that citizen prior to the declaration of state~~
364 ~~of emergency or disaster or thereafter acquired in compliance with all applicable laws of~~
365 ~~this state and the United States; and".~~

366 **SECTION 7.**

367 Article 4 of Chapter 18 of Title 50 of the Official Code of Georgia Annotated, relating to
368 inspection of public records, is amended by revising subsection (d) of Code
369 Section 50-18-72, relating to when public disclosure not required, as follows:

370 "(d) This article shall not be applicable to any application submitted to or any permanent
371 records maintained by ~~a judge of the probate court~~ the Secretary of State pursuant to Code
372 Section 16-11-129, relating to licenses to carry pistols or revolvers, or pursuant to any other
373 requirement for maintaining records relative to the possession of firearms. This subsection
374 shall not preclude law enforcement agencies from obtaining records relating to licensing
375 and possession of firearms as provided by law."

376 **SECTION 8.**

377 This Act shall become effective upon its approval by the Governor or upon its becoming law
378 without such approval.

379 **SECTION 9.**

380 All laws and parts of laws in conflict with this Act are repealed.